

# EXHIBIT 12

Hon. Tiffany M. Cartwright

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JOANN LEDOUX,

Plaintiff,

v.

OUTLIERS, INC., DANIEL FREED, MATT  
RUBIN, BRAND NUTRACEUTICALS, INC.,  
BRAND PACKAGING GROUP, INC., and  
JOHN AND JANE DOES 1–5,

Defendants.

CASE NO. 3:24-cv-5808-TMC

**DECLARATION OF DANIEL FREED**

1. My name is Daniel Freed. I am over eighteen years of age and am competent to testify to the matters set forth in this declaration. I make this declaration in support of my, Matthew Rubin, and Thesis's Second Motion to Compel Arbitration.

2. I founded Defendant Outliers, Inc. ("Thesis") in 2017. I have been its chief executive officer since then.

3. The facts stated in this declaration are of my own personal knowledge acquired in the course and scope of my responsibilities as Thesis CEO. Those responsibilities include operational management, performance management, strategic direction and growth, and risk management. I am involved in the day-to-day operations of the company, which is and has largely been web-based. Thesis's revenue is primarily web-driven, making Thesis's website a

critical aspect of the company. So I have been—and continue to be—familiar with Thesis’s website, how customers make purchases on Thesis’s website, and the terms and conditions set forth on and linked to Thesis’s website.

4. The facts stated in this declaration are also within my own personal knowledge obtained through my review of business records that Thesis maintains in the course and scope of Thesis’s business. I have specifically reviewed and am familiar with Thesis’s internal records showing Plaintiff Joann LeDoux’s Thesis transaction history.

5. Based upon my review of Thesis’s records, LeDoux purchased a subscription of Thesis products on or about March 18, 2021. LeDoux completed the purchase on findmyformula.com (“Find My Formula”).

6. At that time, Thesis used Carthook Inc.’s web-based checkout technology. Find My Formula’s checkout page for a subscription purchase showed a prominent “purchase” button; and located directly above that button was a check box for customers to click confirming their agreement to Thesis’s “Terms and Conditions” (“Terms”). Text followed the check box to the effect of: “I have read and agree to the Terms and Conditions and Medical Disclaimer.” The Terms were hyperlinked to that text. Thus, before clicking the purchase button, the customer could view the entire text of the Terms by clicking the hyperlink. It was not possible to successfully purchase a subscription of Thesis products on Find My Formula unless the check box agreeing to the Terms was clicked before pressing the purchase button.

7. I have also reviewed materials available from <https://web.archive.org/> with respect to Find My Formula. Exhibit A to this Declaration is the Wayback Machine’s capture of the content present at <https://www.findmyformula.com/terms> on or about June 22, 2021. The captured Terms state:

#### **DISPUTE RESOLUTION AND CHOICE OF LAW**

Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by binding arbitration administered by the American

1 Arbitration Association in accordance with its Commercial Arbitration Rules. The  
2 arbitration hearing shall take place in the Southern District of New York, before a  
3 single arbitrator. Judgment on the award rendered by the arbitrator may be entered  
4 in any court having jurisdiction thereof.

5 Further, you agree that any issue or dispute arising out of or in connection with your  
6 use of our site, intellectual property, the Terms, or any matter concerning Company  
7 shall be governed by the laws of the United States and the State of New York with  
8 venue in the Southern District of New York.

9 8. In my role as Thesis CEO, I reviewed and approved the Terms before Thesis  
10 published them on Find My Formula. Exhibit A accurately reflects the Terms that were  
11 hyperlinked to Find My Formula in June 2021 and beforehand. Thesis rebranded after July  
12 2021, the month that the company hired Senior Software Engineer Sameer Anand. Thesis  
13 changed its website as part of that rebranding. In particular, Thesis removed the check box  
14 requiring customers to agree to the Terms, though the Terms remained hyperlinked on the  
15 checkout page. I personally approved the removal of the checkbox that was present on the Thesis  
16 checkout page in March 2021.

17 9. Therefore, when LeDoux purchased a subscription of Thesis products on Find  
18 My Formula in March 2021, she: (1) could not have done so without a check mark in the check  
19 box agreeing to the Terms, and (2) could view the Terms in their entirety. Because LeDoux  
20 successfully bought a subscription of Thesis products on Find My Formula, the check box must  
21 have been clicked when she pressed the purchase button completing the transaction.

22 10. I declare under penalty of perjury, under the laws of the United States of America,  
23 that the foregoing is true and correct.  
24  
25  
26

Executed this 18th day of March, 2025, in New York, New York.

*Dan Freed*

Daniel Freed

# Exhibit A

# Terms and Conditions

**CAREFULLY READ THESE TERMS & CONDITIONS BEFORE ORDERING**

## INTRODUCTION

These Terms and Conditions (“Agreement” or “Terms”) constitute a binding written agreement between OUTLIERS INC., and its affiliated entities (collectively “Company,” “we,” “us,” or “our”) and you (“you” or “Customer”). To make these Terms easier to read, the services offered by the Website are collectively called “Services.”

This Website is operated by the Company. PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THIS WEBSITE. THESE TERMS OF USE DESCRIBE YOUR LEGAL RIGHTS AND RESPONSIBILITIES, AND BY ACCESSING OR USING THE WEBSITE OR SERVICE, YOU ACCEPT AND AGREE TO BE BOUND AND ABIDE BY THIS AGREEMENT. THESE TERMS FORM A LEGAL AGREEMENT BETWEEN YOU AND US REGARDING YOUR USE OF THE SITE ALONG WITH THE RELATED SERVICES, FEATURES, CONTENT, AND OFFERS PROVIDED ON THE WEBSITE. THESE TERMS ALSO INCLUDE A MANDATORY ARBITRATION CLAUSE. IF YOU ARE NOT WILLING TO BE BOUND BY THESE TERMS, INCLUDING THE DISCLAIMERS, YOU MAY NOT ACCESS OR USE THIS WEBSITE. IF YOU DO NOT UNDERSTAND AND AGREE TO ALL OF THESE TERMS, OR ARE UNDER EIGHTEEN (18) YEARS OF AGE, YOU SHOULD CEASE ALL USE OF OUR SITES AND LOGOFF IMMEDIATELY. Your use of this Website, purchase or use of any of our products constitutes your agreement to these Terms and Conditions.

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By making any use of our Websites (“Website” or “sites”), Services, and any purchase from us, you expressly agree to the terms contained herein.

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For purposes of these Terms: (i) “Content” means text, graphics, images, music, software, audio, video, works of authorship of any kind, and information or other materials that are posted, generated, provided or otherwise made available through the Services or sites; and (ii) “User Content” means any Content that Account holders (including you) provide to be made available through the Services or sites. Content includes without limitation User Content. Any information submitted on the site is subject to the terms of which are incorporated herein.

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Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by binding arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. The arbitration hearing shall take place in the Southern District of New York, before a single arbitrator. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

Further, you agree that any issue or dispute arising out of or in connection with your use of our site, intellectual property, the Terms, or any matter concerning Company shall be governed by the laws of the United States and the State of New York with venue in the Southern District of New York. If any provision of the Terms is found to be invalid by any court having competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of the Terms, which shall remain in full force and effect.

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